

UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF PENNSYLVANIA

JAMEL S. DUMAS

Plaintiff,

v.

PATRICK MCKINNEY, LEBANON
CITY, LEBANON COUNTY, DANIEL
WRIGHT AND JOHN DOES 1-10

Defendants

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CIVIL ACTION NO.: 2009-cv-02235

PLAINTIFF'S PRETRIAL MEMORANDUM

Date LR 16.3 Conference was held by counsel: February 14, 2011

A. Brief statement as to federal court jurisdiction

28 U.S.C. § 1331 (federal question) via § 1983 (civil rights).

B. Summary statement of facts and contentions as to liability

On April 20, 2008, Plaintiff, Jamel Dumas, was lawfully upon the premises of 407 North 5th Street, Lebanon, Pennsylvania. On the above date, Plaintiff was moving his family into their new residence. Plaintiff was assisting his grandmother, H. Mary Dumas-Sapp ("grandmother") and his uncle, Robert Dumas ("uncle").

That evening, uncle asked their new neighbor, Alice Gingrich ("neighbor") to take him to the store. Upon his return, uncle, who was diabetic and suffers from seizures, had a seizure and was not able to get out of the automobile. While in the midst of his seizure, uncle fell out of the automobile and onto the sidewalk. Neighbor requested help from Plaintiff.

Plaintiff came from inside his residence to the sidewalk in front of his home to assist uncle. Plaintiff knelt behind uncle, put his arms under uncle's shoulders and attempted to pull uncle to his feet.

Defendant, Officer Patrick McKinney approached Plaintiff from behind and, without announcing himself or giving warning, tasered Plaintiff in the back causing Plaintiff and uncle to fall to the ground. Plaintiff and uncle were thereafter arrested.

Plaintiff questioned Defendant as to why uncle was being arrested and Defendant replied, “shut up before I taser you again”.

Plaintiff contends McKinney liable to Plaintiff for McKinney’s excessive force.

C. Comprehensive statement of undisputed facts

1. On April 20, 2008, Officer McKinney was employed as a Police Officer by the City of Lebanon.
2. On that date, at approximately 1:11 a.m., Officer McKinney was dispatched to the 400 block of North5th Street in Lebanon
3. At that location, Plaintiff was outside with his uncle, Robert Dumas.
4. Officer McKinney deployed his Taser, striking Plaintiff in the lower portion of his back and right side.
5. Plaintiff was subjected to a 4-second charge from the Taser.

D. Brief description of damages

Plaintiff suffered a four-second charge from McKinney’s taser.

Plaintiff estimates his pain and suffering unliquidated damages to be: \$15,000.00.

Plaintiff suffered no immediate hospitalization, disability, special monetary damage or other special damage claim.

In short, this action will be tried exclusively as to pain and suffering resulting from the tasing.

E. Names of witnesses

1. Jamal Dumas.
2. Patrick McKinney.

3. Robert Dumas.

4. H. Mary Dumas-Sapp.

5. Alice Gingrich.

F. Summary of testimony of each expert witness

Plaintiff does not intend to present any expert witness.

G. Special comment about pleadings and discovery

Plaintiff has no special comment.

H. A summary of legal issues involved

There are no special legal issues (except for the predominant question as to whether taser was justifiable).

Plaintiff sets forth his proposed jury instructions filed under separate cover.

I. Stipulations desired

None.

J. Estimated number of trial days

Two.

K. Any other matter pertinent to the case to be tried

None.

L. Schedule of exhibits

See Clerk's Exhibit List. (Exh. A).

M. Special verdict questions

See attached proposed jury interrogatories filed under separate cover.

N. Certification

Plaintiff certifies that counsel have conferenced with a view towards eliminating irrelevancies, side comments, objections and other matters not necessary for consideration by the trier of fact.

WEISBERG LAW, P.C.

/s/ Matthew B. Weisberg
Matthew B. Weisberg, Esquire
Attorney for Plaintiff

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CERTIFICATE OF SERVICE

I, Matthew B. Weisberg, Esquire, hereby certify that on this 28th day of February, 2011, a true and correct copy of the foregoing Plaintiff's Pretrial Memorandum in support thereof were served via ECF upon the following parties:

Janelle E. Fulton, Esq.
Lamb McErlane, PC
24 East Market Street, Box 565
West Chester, PA 19381

WEISBERG LAW, P.C.

/s/ Matthew B. Weisberg
Matthew B. Weisberg, Esquire
Attorney for Plaintiff